



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

A NATIONAL MILITIA.

THE existing national militia law was enacted in 1792, since which time no material modifications of it have been made. It will be conceded, even if the law had been originally perfect and adapted to its objects, that time and circumstance must have made some of its provisions obsolete, and experience have suggested changes in others. That the law was not originally perfect is sufficiently evidenced by the fact that President Washington, in the year following its enactment, earnestly urged its amendment, and that more than thirty of the annual messages of the presidents since that time have called the attention of Congress to the subject.

To form a just opinion of what changes in the law are necessary, we must first agree on the objects of an organization of the militia, and wherein the existing militia fails to fulfill those objects. It is also essential, in determining what changes are requisite, to inquire why all efforts to secure any change have hitherto failed.

The objects of the organization of the militia I conceive to be twofold: in the States separately, to provide a regularly disciplined force to suppress riot or insurrection and to aid the civil authorities in the execution of the laws; in the States collectively, to provide for the emergencies of national defense. Hence the provisions of the Constitution for a divided and yet a joint control of the militia by the State and national authorities.

So far as the States separately are concerned, it would naturally follow that their respective provisions for the organization and support of the militia would depend on their situation and local necessities; and such has been the fact. So far as the States collectively are concerned, it is vital that these disparities should not be allowed to exist, and that all should be equally competent to "provide for the common defense."

Assuming that the purposes named are the objects of an organization of the militia, it will be conceded that the existing militia fails to fulfill its purposes, by reason of disparity of strength and efficiency, and lack of uniformity of organization in the different States.

To answer the inquiry why all efforts to reorganize the militia have hitherto failed, it is necessary to examine the provisions of the existing law and the changes that have been proposed. The history of the subject is interesting and instructive, but want of space forbids a detailed recital of it.

The existing law requires every citizen between eighteen and forty-five years of age to arm and equip himself and perform the duties of militia training and drill. At the time of its enactment, the country had a population of less than five million, was subject to constant and active Indian hostilities along an extended frontier, had unsettled difficulties with Great Britain, and threatening disputes with Spain and France. That every citizen should be a soldier was so much a necessity that it was promulgated as a fundamental doctrine of republican institutions.

As the Government became more secure and the population larger, it became apparent that it was impossible and unnecessary to enforce active militia duty upon the whole people at their individual expense. All messages of presidents, all reports of secretaries of war, Congressional committees, and specially appointed commissions from 1790 to 1840, concur in attributing the failure of the militia system to the impracticability of holding the whole population to militia service. Consequently, the first and, in fact, all subsequent efforts to change the militia law were directed to classifying the militia so that only a portion should be trained and held to service in time of peace. Various and ingenious were the propositions made for such a classification, and the failure to obtain any change resulted solely from the difficulty of agreeing on any one of these propositions.

If I have correctly stated the objects of the organization of the militia, the points wherein it has failed to fulfill those objects, and the cause of the failure of all efforts to amend its organization, the solution of the militia question appears to my mind ready and simple.

The proper uses of a national militia were well expressed by Jefferson in one of his annual messages to Congress, to be "not only to meet the first attack, but, if it threatens to be permanent, to maintain the defense until regulars may be employed to

relieve them." General Gaines, in a letter on the subject, indicated another important feature of the value of militia training, by asserting that "many valuable officers and soldiers have at different times made their way through volunteer companies and battalions to stations of great utility and distinction in the public service."

If the question was simply how to organize an effective national militia, it could be very quickly and satisfactorily answered by any person of military education and experience. But there are certain limitations imposed by our form of government that make the question a more difficult one. Under these limitations the question becomes, how can the National Government, under the powers conceded to it by the Constitution, provide that the militia of a large number of separate States shall be so equally efficient and uniformly organized as to be available for national defense when required?

If the solution of the problem be left entirely to the different States, it is evident that no State will make any greater expenditure for the organization and instruction of its militia than its own necessities require. This we find to be the actual fact and the cause of the present disparity between the States. It is also evident that no construction of the Constitution will justify compelling the States to incur such expenditures as may be necessary to organize and instruct their militia for use in the common defense.

I am one of those who believe that the powers conceded to the National Government over the militia are very much greater than it has ever exercised or claimed. The committee of the Federal Convention that reported the clause of the Constitution giving Congress power "to make laws for organizing, arming, and disciplining the militia," on being questioned as to what they meant by those expressions, replied that "arming meant not only to provide for uniformity of arms, but included the authority to regulate the modes of furnishing, either by the militia themselves, the State governments, or the national treasury; that laws for disciplining must involve penalties and everything necessary for enforcing penalties." But whatever may be the technical or the proper construction of the powers of Congress, I do not believe in making any change in the relative powers of the States and National Government over the militia to which we have become accustomed by long habit and practice. In the solution of the militia question which I shall suggest, no change

is required, and we may most happily eliminate any question of constitutional power.

In my opinion, time and circumstance have solved all the difficulties in the militia system for which statesmanship has hitherto failed to find the remedy.

As I have stated, the principal fault of the militia law was early found to lie in the impracticability of holding the whole population to militia duty. Its absurdity is sufficiently apparent if we consider that if it were enforced we should have to-day an armed militia of seven million men. For fifty years the discussion was continued how to divide and classify the militia to secure only the necessary militia force. During this time, the country rapidly advanced in population and prosperity, and in the same proportion that it progressed, the militia law was disregarded. A new militia began to be formed by a process of natural selection, and volunteer companies were organized by those whose tastes inclined them to the "pomp and circumstance of war." Some of the States fostered and encouraged these volunteer organizations until they increased sufficiently in numbers to furnish all the militia force required. Annual training days and the "corn-stalk militia" gradually disappeared, and are now almost as completely forgotten as the law under which they flourished.

There exist to-day in the various States about one hundred and twenty-five thousand organized volunteer militia. In some of the States they are paid for a portion of the time devoted to drill and instruction, are furnished with uniforms, and thoroughly organized and equipped to take the field at a moment's notice; in other States they are forced to support themselves at their individual expense, and are wholly unprepared and unfit to render service. Enough, however, has been shown by these volunteer organizations to prove their value if properly supported, and to indicate that in a total population of fifty million there is a sufficient number interested in military affairs to voluntarily furnish as large a militia force as the country, under any circumstances, should maintain.

These are the facts which have led me to the opinions I offer in solution of the militia question. While legislators have been endeavoring to find a mode of classifying the militia, the latter have classified themselves. We have to-day two classes of militia—the active militia, composed of volunteer organizations, and the inactive militia, composed of the body of the people, who

have absolutely forgotten or are ignorant of the fact that the law imposes any militia duty on them. It simply remains for Congress to recognize the existing condition of affairs by law, to accept the volunteer militia as all the militia needed in time of peace, and to make the necessary provisions for their encouragement and support.

As to the manner in which the Federal Government should encourage the formation of volunteer militia organizations, to what extent it should provide for their support and dictate the manner and nature of their instruction, I believe that it would be impolitic to do many things that in the abstract would be conceded to be wise and salutary measures. Any interference with the organization of the volunteer militia force that now exists would be resented, and perhaps would result in disintegrating it, and I therefore favor providing further for its support and instruction, rather than attempting the creation of a new force.

One great obstacle to the self-improvement of the volunteer militia has been the small amount of the annual appropriation and the limitation on the purposes to which it may be applied. The annual appropriation was fixed by law in 1808 at two hundred thousand dollars, which is now an absurdly small sum when divided among thirty-eight States. The law has always been construed to limit the use of the appropriation to furnishing the States with arms, equipments, and ordnance stores, and consequently, in those States whose local necessities have not compelled them to supply the other stores which are needed, the volunteer organizations are obliged to furnish their own uniforms and overcoats, and have never been able to obtain the benefit of camp instruction, for the want of tents, blankets, and camp equipage.

My opinion, therefore, is, that the first and most obvious amendment necessary in the details of the law is to increase the annual appropriation to at least one million dollars, and to provide that the States may draw their respective quotas of that sum in arms, equipments, uniforms, camp equipage, or in money to pay their militia for annual duty in camps of instruction, as they may choose.

The law should further prescribe the amount of drill and instruction to be required of the volunteer militia, and provide for annual inspections, by officers of the army, to determine their efficiency. The right of any State to participate in the annual appropriation should be made dependent on its passing laws to

organize and train its militia in the manner prescribed by Congress, and on the report of the inspector that such laws are complied with. Such an arrangement would obviate all questions as to the extent of the power of the Federal Government over the militia in time of peace. This, however, is not a merely specious device for evading constitutional questions; for, the results, I believe, would be more satisfactory than could be obtained by the most stringent laws.

Space is wanting here for the consideration of details, but such as are adapted to this plan will readily suggest themselves.

The conclusions which I have reached may be summed up in the following propositions:

First. Divide the militia by law into two classes—the active, and the inactive. The active militia to consist of existing volunteer organizations and such additional ones as may be formed, up to a prescribed number, in each State.

Second. Increase the annual appropriation for the militia to one million dollars, to be apportioned among the States according to the actual number of volunteer militia organized in each, and allow the States to draw their allotted portion in arms, uniforms, camp equipage, or money to pay militia for camp duty, as they may choose.

Third. Prescribe a simple and durable uniform, to be furnished by the United States, and to be worn by the militia whenever performing any duty specified by law; allowing them to provide at their own expense any special uniforms they may desire for their own uses.

Fourth. Prescribe the organization and regulations for the training and discipline of the militia, and make participation in the annual appropriation dependent on compliance with such requirements.

I believe that Congress could be induced to amend the law to the extent I have indicated. The National Guard Association have signified that such amendments would be acceptable to the volunteer militia, and doubtless they would be acquiesced in by the people. I confess that I do not regard this as the best possible plan on which to organize a national militia, but I consider it as the only feasible plan, and as such, prefer advocating it rather than to urge an elaborate plan that would arouse opposition, create jealousies, and inevitably be defeated.

ALBERT ORDWAY.